

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:03-cr-128
also Case No. 1:08-cv-150

-vs-

District Judge Susan J. Dlott
Chief Magistrate Judge Michael R. Merz

:

TIMOTHY SMITH,

Defendant.

REPORT AND RECOMMENDATIONS REGARDING APPEAL

This case is before the Court on Defendant's Notice of Appeal (Doc. No. 104) and Motion for Leave to Appeal *in forma pauperis* (Doc. No. 105).

In adopting the Magistrate Judge's Report and Recommendations on the merits, Judge Dlott already determined that Defendant should not be granted leave to appeal *in forma pauperis* and any requested certificate of appealability. Defendant has offered no reasons to change that decision; in fact, he has made no argument at all. In addition, Defendant failed to object to the Report and Recommendations and thereby waived any arguments he might make on appeal. *United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

Therefore the Motion for Leave to Appeal *in forma pauperis* should be denied.

July 22, 2008.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).